



Volume 10. Issue 22

Why not ask the Av Beis din first?

Dinei hatumos v'haterharos maschilin min hagadol. Dinei nefashos maschilin min hatzad.
Sanhedrin 4:2

What is “*min hatzad*”? The *mefarshim* explain based on 4:3-4 that the members of the *Sanhedrin* were seated in a semi-circle according to their *chachmah*. The *Rambam* says (*Hil. Sanhedrin* 1:3) that in a *beis din* of twenty-three, for example, the greatest of the *dayanim* sits at one end of the semi-circle, while the least of the *dayanim* sits at the other end. The *Tiferes Yisrael* on our *Mishnah* disagrees and says that the greatest of the *dayanim* sits in the middle of the semi-circle with the lesser *dayanim* sitting both to his right and the left. The root of this *machlokes meforshim* is how they understand the *Tosefta* in *Sanhedrin*, which records both opinions.

According to either *shitah*, the *Mishnah* is teaching us that in *dinei nefashos* we ask the least prominent of the *dayanim* first. To explain why, the *meforshim*, based on the *Gemara* (36a), quote from *Shemos* 23 “*Lo sa'aneh al riv*.” “*Riv*” is written in the *Torah chaser*, without a *yud*. It can thus also be read as “*rav*”, which would mean that one should not respond to a master. The *Torah* is teaching us that it is forbidden for the smaller *dayanim* to argue with the *av beis din* or head *dayan* of any particular *beis din* (regarding *dinei nefashos*). Therefore, the smaller *dayanim* must share their opinion first. This is in fact how *Rashi* (18b) and the *Rambam* in the *peirush hamishnayos* understand this *issur*. The *Tosfos Yom Tov* says that it would seem that the intention of this *issur* is to show *kavod* towards the head *dayan*.

However, the *Nimukei Yosef* and other *rishonim* raise a number of problems with the aforementioned approach. As we know from *Mishnah* 5:4, if one of

the *talmidim* have an argument that would vindicate the defendant they must speak up and not be quiet. Also, the *rishonim* (cited in *Margaliyos Hayam*) ask, if the *av beis din* asserts that the *psak* is a certain way and the entire *Sanhedrin* disagrees, they cannot argue? We must follow the majority as made clear in various *mishnayos* throughout the *masechta* and as the *Torah* clearly states. Thus, it cannot be that is forbidden to argue with the *gadol hadayanim*.

These *rishonim*, including *Rashi* on 36a, say that the *pasuk* above is teaching us a different lesson, which is that in *dinei nefashos*, a *beis din* must be very careful that no *dayan* feel scared to express his opinion. If the greatest *dayan* speaks first the other *dayanim* might be inhibited from putting forth a dissenting view. The *Margaliyos Hayam* brings down from these *rishonim* that the *Torah's* command is really on the *gadol hadayanim* not to speak first.

This *halacha* that in *dinei nefashos* that we start from the smallest *dayan* is also relevant to *Tisha B'av*. As related in the *Gemara* in *Gittin*, *R' Zecharya ben Avkulos* argued that nothing should be done to the *korban* that *Bar Kamtza* made into a *ba'al mum* and it should not be placed on the *mizbeach* and that no action should be taken against *Bar Kamtza*. The *Gemara* say, it was the humility of *R' Zecharya ben Avkulos* that eventually caused the destruction of the *Beis HaMikdash*. The question is asked that what is the humility here? The *Gra* (I think) answers that *R' Zecharya ben Avkulos* was the head of the *Sanhedrin*. As we have learned, the *halacha* is that in *dinei nefashos* the head *dayan* should not speak first. Once *R' Zecharya ben Avkulos* did speak the other members of the *Sanhedrin* remained silent.

She'yibaneh beis hamikdash bimheirah b'yameinu.

Zamir Pollak

Revision Questions

סנהדרין ג' ח' ו' ג'

- Can one bring evidence after a case is closed? (ג' ח')
- Explain the two cases that are debated relating to the previous question and the case where everyone agrees. (ג' ח')
- What is the source for the requirement of *drisha ve'chakira* in both monetary and capital cases? (ד' א')
- List eight differences between monetary and capital cases? (ד' א')
- What is different about the way *beit din* answer a question regarding issues of purity and impurity as apposed to ruling in a capital case? (ד' ב')
- Which people are valid as witnesses for monetary cases but not for capital cases? (ד' ב')
- How was the building housing the *Sanhedrin* structured? (ד' ג')
- Other than the judges and parties to the case, who else was present and what were they doing? (ד' ג')
- In a *sanhedrin katana*, explain how they would replace a judge. (ד' ד')
- What is the *pasuk* brought from *Bereshit* that is used to demonstrate to the witnesses of a capital case, the seriousness of the case and how it differs from a monetary cases? (ד' ה')
- List three reasons why Man was initially created alone? (ד' ה')
- What two *p'sukim* are brought to encourage the witness to a capital offence to testify? (ד' ה')
- What are the seven *chakirof*? (ה' א')
- How many *chakirof* does *R' Yosi* require and what are they? (ה' א')
- What other questions were asked of the witnesses? (ה' א')
- What other questions were asked of witnesses in a case of idol worship? (ה' א')
- How many *bedikot* were performed? (ה' ב')
- What is the difference between *chakirof* and *bedikot*? (ה' ב')
- If one witness said the incident occurred on the second of the month and the other witness said it occurred on the third, are they invalid as witnesses? (ה' ג')
- What flexibility is given where the witnesses conflict regarding the time of the incident? (Provide both opinions) (ה' ג')
- What would occur immediately after the witnesses were interrogated? (ה' ד')
- Could the witnesses contribute any further to the case? (ה' ד')
- Could the "students" contribute to the deliberations? (ה' ד')
- What would cause the case to delay and what would the judges do during this time? (ה' ה')
- Explain in detail how the deliberation would proceed if only a majority of one judge ruled guilty in a capital case. (ה' ה')
- When taking a person out for stoning: (ו' א')
 - Where was the location of the site? (ו' ב')
 - What would happen if someone discovered a way to find favour for the guilty party?
 - What would the person leading him announce?
- What would they request from the criminal prior to stoning? (ו' ב')
- What are the two opinions regarding the difference between the stoning of a man and woman? (ו' ג')

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
 Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Beit Ha'Roeh
 Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
 9:00am
Kollel Magen Avraham
 Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
 In US dial: 718 906 6400
 Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
21 th July ז' אב	22 th July ח' אב	23 th July ט' אב	24 th July י' אב	25 th July יא' אב	26 th July יב' אב	27 th July יג' אב
Sanhedrin 6:4-5	Sanhedrin 6:6-7:1	Sanhedrin 7:2-3	Sanhedrin 7:4-5	Sanhedrin 7:6-7	Sanhedrin 7:8-9	Sanhedrin 7:10-11

